

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

WP(C).No. 27586 of 2007(H)

OS.74/2001 of ADL.SUB COURT, THALASSERY

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PETITIONER:

T.P.PADMINI,
KAILAS BHAVAN, THEKKILA PEEDIKA,
CHOVVA P.O., KANNUR.

BY ADV. SRI.V.PREMCHAND

RESPONDENT:

P.ARAVINDAKSHAN,
PROPRIETOR, MINI LUCKY CENTRE,
NEAR BUS STAND, KANNUR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 18/09/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.27586 of 2007

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Dated this the 18th day of September, 2007.

JUDGMENT

This Writ Petition is filed seeking to set aside Ext.P6 whereby the court ordered sale of the property on 4.9.2007 fixing the upset price as Rs.7 lakhs. The main contention relied on by the counsel for the writ petitioner is that she has filed counter on draft sale paper on 26.3.2007 contending for the position that the property having an extent of 9 cents takes in a house and that the market value of the property prevailing in the locality is more than Rs.5 lakhs per cent and the house is worth more than Rs.12 lakhs and therefore fixation of upset price of Rs.7 lakhs for a property worth Rs.57 lakhs is grossly inadequate and secondly, it is submitted that since the decree debt does not come above Rs.6 lakhs or Rs.7 lakhs it is not necessary to sell the entire property for the purpose of realising the decree debt and therefore, the court may be directed to sell a portion of the property for realisation of the amount.

2. I am informed that some claim petitions also have been filed and the matter stands posted to 22.9.2007. The Apex Court as well as this Court on various occasions had cautioned that the property that is really necessary for discharge of the decree debt

alone need be sold and it is the imperative duty of the court to consider that point before ordering sale of the property. In this case, I am informed that even the value shown by the judgment debtor is not incorporated in the sale proclamation. These are all against the provisions of law in relation to the conduct of the sale.

3. Therefore, I direct the court below to consider the objection raised by the judgment debtor that a portion of the property is sufficient for the discharge of the decree debt and further also to include the estimated value, which will be shown by her for the property to be sold after hearing the decree holder and any other persons interested in the matter. The court may proceed with in accordance with law for effecting the sale of the property.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.